

REMARKS

Applicant is submitting a Request for Continued Examination herewith. Reconsideration of the subject application in view of the present amendments and remarks is respectfully requested. All rejections and objections set forth in the Office Action mailed July 19, 2011 (hereinafter "the Office Action") are respectfully traversed.

In the Claims

Applicant has canceled claims 21, 25-27, 30, 31, 35-37, 40 and 45 and amended claims 1 and 11 herein. No new matter is introduced by these amendments, support for which is found in the subject application, as originally filed, *inter alia*, at page 5, paragraph 35 and page 8, paragraph 47.

Applicant has amended claims herein solely to expedite prosecution of this application. In doing so, Applicant does not dedicate the subject matter of the amended claims, as originally filed and/or as previously pending, to the public, and does not acquiesce to the Examiner's current or previous reason(s) offered in support of the rejections of the amended claims and/or any claim(s) that depend(ed) therefrom. Applicant reserves the right to seek patent protection for claims similar or identical to the amended claims, as originally filed and/or as previously pending, in one or more subsequently filed and related applications.

Rejections Under 35 U.S.C. § 112

Claims 1 and 11 stand rejected in the Office Action under 35 U.S.C. § 112, second paragraph. Applicant respectfully traverses this rejection.

Applicant has amended claims 1 and 11 to remove the recitation of "measuring" and "measured" and replaced them with "monitoring" and "monitored," respectively. In addition, Applicant has amended the claims to better recite which of the streams is being referred to.

Applicant respectfully submits that the claims, as amended, are in compliance with 35 U.S.C. § 112 and asks that the rejection be withdrawn.

Rejections Under 35 U.S.C. § 102

Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20 and 41-44 stand rejected in the Office Action under 35 U.S.C. § 102(e) as being anticipated by Frerichs, U.S. Patent 6,684,249. Applicant respectfully traverses the rejection.

In the Office Action, it is indicated that Frerichs “discloses multiple embodiments and examples that determines if said audio stream is delayed or slowed down.” (Page 2, paragraph 2). Applicant respectfully disagrees and submits that Frerichs does not teach a buffer status sensor to “monitor a rate of playback of said stored portions of said audio stream” and to “monitor a rate of said audio stream received from said audio streaming server,” in order to identify “one or more locations...where an audio segment could be inserted,” as are recited in claim 1, as amended.

The “delay” in Frerichs, cited by the Office Action, is caused by, for example, “latency in the network” (Frerichs, Col. 7, line 35) and this delay is not used to determine where to place the flag (as taught by Frerichs) that identifies where an ad is inserted. As will be discussed below, this delay due to network latency is irrelevant to determining where the flag and, therefore, the advertisement, is placed in the audio stream.

Frerichs depicts and describes a method 300 at Col. 6, line 57 (*et seq*) and with reference to Fig. 3 (reproduced below). It is respectfully submitted that the portion of Frerichs cited in the Office Action should not be taken out of the context of this method 300 as it is actually depicted and described in Frerichs.

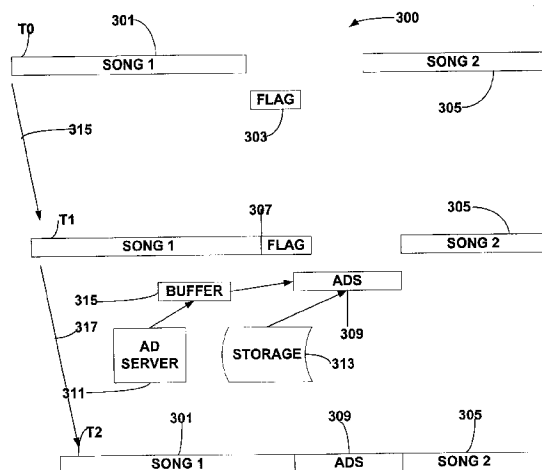


FIG. 3

Frerichs states:

At a server location, the method 300 provides first audio data for a first song 301 and second audio data for a second song 305. The first audio data is provided at time T_0 , which is an initial or zero time, as given only for reference purposes. As shown, the method also provides a flag comprising advertisement indication and delay at the server location. The flag is data that indicates where an advertisement is to be inserted. (Col. 6, line 62 - Col. 7, line 2; emphasis added).

Thus, any reference to time T_0 is for showing an order of events as time elapses as the stream progresses through the method.

Subsequently, Frerichs states:

...the method adds the flag 303 onto first audio data, which is now between the first song and second song at the server location (or other location). Here, the flag can be provided at the radio station server location. Alternatively, the flag can be provided at a tuning server location or other locations. In most embodiments, the flag is provided onto the first audio data at first time T_1 , where $T_1 > T_0$, which signifies a delay 315 between the initial time and the first

time. The delay can be caused by a variety of factors such as latency in the network or the like. (Col. 7, lines 26-35; emphasis added).

Accordingly, the flag 303 is added onto the first audio data, i.e., placed in the stream to follow the first song and before the second song. This placement, however, is not determined by the delay T_1 of the network. The delay T_1 is referenced to show time elapsing during the operation of the method. At most, the entire stream consisting of the first song, the flag and the second song is delayed, but the placement of the flag in the stream, with respect to the two songs, does not change.

Continuing, Frerichs states:

The method monitors the streaming audio for the flag 307. Once the flag has been found, the method inserts the advertisement between the first audio data and the second audio data. The streaming audio data is now ready for output at an audio output device, which is coupled to the client device. (Col. 7, lines 48-53; emphasis added).

and

Next, the method outputs the first song through audio output device. The method output the advertisement through audio output device; and the method output the second song through audio output device. As shown, the first song is outputted at second time T_2 , where $T_2 > T_0$, which signifies a delay 317 between the first time and the second time. The delay can be caused by a variety of factors such as latency in the network or the like. The delay also can be selectively caused by way of a buffer or cache and the like. As shown, the streaming audio, which is output, includes first song 301, advertisement 309, and second song 305, which is output in a continuous manner. (Col. 7, line 59 - Col. 8, line 3; emphasis added).

The flag 303, 307 (representing where the advertisement is placed), is in a “fixed” location in the stream, i.e., between the first song and the second song. The flag’s location does not change once initially placed. The entire stream - consisting of the first song, the

advertisement and the second song - might not be played until after time T_2 , however, this latency is only referenced to show the passage of time during the method.

In contrast, claim 1, as amended, recites:

A system for audio streaming, the system comprising:
an audio streaming server providing an audio stream;
a client including a buffer storing at least portions of said audio stream received from said audio streaming server;
a buffer status sensor operative to: (1) monitor a rate of playback of said stored portions of said audio stream in said buffer, and (2) monitor a rate of said audio stream received from said audio streaming server to determine if said audio stream received from said audio streaming server is delayed or slowed down, said buffer status sensor identifying, as a function of (a) said playback rate of said stored portions of said audio stream in said buffer and (b) said rate of said audio stream received from said audio streaming server, one or more locations in said stored portions of said audio stream stored in said buffer where an audio segment could be inserted when said audio stream from said audio streaming server is determined to be delayed or slowed down; and
a client audio output inserter operative in response to an output from said buffer status sensor to provide a modified audio stream output from said buffer including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said identified locations. (emphasis added)

Applicant respectfully submits that there is no teaching or suggestion in Frerichs of monitoring “a rate of playback” and “a rate of said audio stream” and then identifying “as a function of (a) said playback rate” and “said rate of said audio stream” where “an audio segment could be inserted,” as are recited in claim 1. Frerichs sets the flag in the audio stream, which determines that the advertisement is to be played between the two songs, and then sends the stream to the output device. The location of the advertisement in the stream is fixed, irrespective of the rates of the stream or the playback device.

Frerichs is silent as to a situation where, for example, a delay occurs in the network (not due to network latency) and the output buffer runs out of audio stream data to play. Contrary to that which is recited in the present claims, as Frerichs is not monitoring the audio stream rate and the playback rate, there can be no disclosure of the identification of a location at which to place a

filler advertisement based on these rates. Once Frerichs sends the audio stream with the flag or advertisement, it appears that the stream is intended to be played and there is no motivation or need to measure the playback rate in order to fill “dead air” spots.

For at least the foregoing reasons, Applicant submits that claim 1 is not anticipated by (or, for that matter, obvious in view of) Frerichs. In addition, Applicant submits that claims 5, 6, 8, 10, 41 and 43 are also patentable over Frerichs for at least the reason that they depend directly from independent claim 1, which is believed to be so patentable for at least the reasons set forth above. Accordingly, allowance of these claims is respectfully requested.

Independent claim 11, as amended, recites:

A method of audio streaming, the method comprising:
providing an audio stream to a client;
storing in a buffer at least portions of said audio stream;
monitoring a rate of playback of said stored portions of said audio stream in said buffer and monitoring a rate of said received audio stream to determine if said received audio stream is delayed or slowed down, wherein said monitoring of said playback rate of said contents of said buffer and said monitoring of said audio stream rate are performed by a buffer status sensor, and said buffer status sensor identifying, as a function of the monitored playback rate of said stored portions of said audio stream in said buffer and said monitored rate of said received audio stream, one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down; and
providing a modified audio stream, which includes inserting pre-recorded audio segments, which were not received in said audio stream, at one or more of said identified locations. (emphasis added)

Applicant respectfully submits that claim 11, as amended, is patentable over the Frerichs reference for at least the same reasons as submitted above with respect to claim 1.

More specifically, claim 11, as amended, is allowable over Frerichs for at least the reason that Frerichs does not disclose, teach or suggest “monitoring a rate of playback of said stored portions of said audio stream in said buffer and monitoring a rate of said received audio stream to determine if said received audio stream is delayed or slowed down” and “identifying, as a function of the monitored playback rate of said stored portions of said audio stream in said buffer and said

monitored rate of said received audio stream, one or more locations in said audio stream where an audio segment could be inserted,” and then “providing a modified audio stream, which includes inserting pre-recorded informational audio segments, which were not received in said audio stream, at one or more of said audio stream locations identified by an output from said measuring,” as are recited in claim 11.

As discussed above in connection with claim 1, Frerichs places advertisements at flagged locations and provides no disclosure, teaching or suggestion of identifying a delay as a function of measured rates as recited in claim 11, as amended. Accordingly, claim 11 is not anticipated by (or, for that matter, obvious in view of) Frerichs, and allowance of claim 11 is respectfully requested.

In addition, Applicant submits that claims 15, 16, 18, 20, 42 and 44 are also patentable over Frerichs for at least the reason that they depend directly from independent claim 11, which is believed to be so patentable for at least the reasons set forth above. Accordingly, allowance of these claims is respectfully requested.

Interview Request

In the event the Examiner is not prepared to allow the application, the Applicant respectfully requests a telephone interview once the Examiner has reviewed Applicant's arguments and claims amendments and prior to preparation of a next Office Action.

In view of the foregoing, Applicant believes the pending claims are in condition for allowance and a notice to this effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application. The Examiner is hereby authorized to charge any fees due to this submission, or credit any balance, to Deposit Account No. 23-0804.

Respectfully submitted,

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